

HOUSE BILL REPORT

SHB 1453

As Passed House:

March 8, 2005

Title: An act relating to the statute of limitations on certain sex offenses.

Brief Description: Removing the statute of limitations for certain sex offenses.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Ahern, O'Brien, Holmquist, Lovick, Orcutt, Williams, Roach, Pearson, Rodne, Campbell, Strow, McDonald, Serben, Crouse, Haler, Pettigrew, P. Sullivan and Simpson).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/8/05, 2/15/05 [DPS].

Floor Activity:

Passed House: 3/8/05, 97-1.

Brief Summary of Substitute Bill

- Removes all statutes of limitations for, if the victim is under the age of 18, rape in the first and second degree and for rape of a child in the first and second degree.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Kathryn Leathers (786-7114).

Background:

Most criminal offenses are subject to specific time limitations during which the crime must be prosecuted. The offenses for which no statute of limitations applies, and therefore may be prosecuted at any time after their commission, include murder, homicide by abuse, vehicular homicide and, if death results, arson, hit-and-run injury-accident, and vehicular assault.

Sex offenses committed against minors are subject to the following limitations periods:

Rape in the first or second degree:

If the victim is either an adult or a minor age 14 or older and the crime is reported to law enforcement within one year of the date of the crime, the limitations period is 10 years after commission of the crime.

If the victim is under the age of 14 and the crime is reported to law enforcement within one year of the date of the crime, the offense may be prosecuted up to three years after the victim's 18th birthday or 10 years after commission of the crime, whichever is later.

If the crime is not reported to law enforcement within one year from the date of the crime, the offense may not be prosecuted more than three years after the commission of the crime unless the victim was under the age of 14 at the time the crime was committed. In the event the victim was under the age of 14 at the time the crime was committed, the offense may not be prosecuted more than three years after the victim's 18th birthday or more than seven years after the rape's commission, whichever is later.

Other Sex Offenses:

The following crimes may not be prosecuted more than three years after the victim's 18th birthday or more than seven years after their commission, whichever is later:

- rape of a child in the first and second degree;
- child molestation in the first and second degree;
- indecent liberties as it applies to any child that is mentally disabled or physically helpless; and
- incest in the first and second degree.

Summary of Substitute Bill:

This bill removes the statutes of limitations for, if the victim is under the age of 18, rape in the first and second degree, and also for rape of a child in the first and second degree. As a result, such an offense may be prosecuted at any time after the date the crime is committed, regardless of when the crime is reported by the victim.

Rape in the first degree is a class A felony with a seriousness level of 12. Rape in the first degree is committed when a person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory: (a) uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or (b) kidnaps the victim; or (c) inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or (d) feloniously enters into the building or vehicle where the victim is situated.

Rape in the second degree is a class A felony with a seriousness level of 11. Rape in the second degree is committed when, under circumstances not constituting rape in the first degree, a person engages in sexual intercourse with another person: (a) by forcible compulsion; (b) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; (c) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority

over the victim; (d) when the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination; (e) when the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or (f) when the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

Rape of a child in the first degree is a class A felony with a seriousness level of 12. Rape of a child in the first degree is committed when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

Rape of a child in the second degree is a class A felony with a seriousness level of 11. Rape of a child in the second degree is committed when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and not married to the perpetrator and the perpetrator is at least 36 months older than the victim.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Until about 150 years ago, there was no statute of limitations for any crime. A victim of such a crime has a lifetime sentence, but the perpetrator gets off the hook. This bill would keep perpetrators of this crime looking over their shoulder, wondering when the victim would be coming forward to report the crime for the rest of his or her natural life. The state will still have to prove all elements of the crime beyond a reasonable doubt, even if the crime is not reported for 20 years. Ninety-five percent or more of these crimes take place in the home, where the victim trusts the perpetrator. This bill will have a deterrent effect but it is not retroactive. Canada has adopted a similar law. Doing the right thing is seldom easy but these are dangerous people and our children must be protected. In 1975, the term "clergy" was removed by the Legislature from the mandatory reporting statute and our communities have greatly suffered as a result. It is time to put our money where our mouths are. This is really a public policy issue. Would you really be able to come forward as a child? At what point would you be able to come forward? These hurdles should be removed. Child sexual abuse kills the child – there is proof of both psychological damage and physiological damage to the brain.

(With concerns) We need to be careful about promising or appearing to promise victims that justice can be obtained many years after the fact. The reality is that such a case gets harder as time goes by. We should be encouraging early reporting. The earlier we get the victims in the system, the more likely we will be able to obtain justice for the victims. From a prosecutorial

perspective, it is very difficult to reconstruct the truth after a long passage of time. Juries have a difficult time believing children when they do report immediately, so we should all be aware that it is even harder to obtain justice to those who wait to report. Not all cases reported many years after the fact will be able to be pursued due to proof problems, and those cases that are pursued will be difficult at best.

Testimony Against: The crimes that lack a statute of limitations are those crimes that involve taking a life. This is so because society deems those crimes to be the most serious of crimes and because there is no question that a crime has occurred. Over time, evidence is lost and witnesses are often no longer available. The current statutes of limitations for child victims were already extended by the Legislature to allow the child some time to be able to report the crime. Crimes against children are rightfully considered to be heinous crimes, perhaps the most heinous in our society. Emotions run high in such cases and our system cannot provide fair trials decades after the crimes are committed.

Persons Testifying: (In support) Representative Ahern, prime sponsor; and Mark Mains and Dan Brackett, citizens.

(With concerns) Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Alison Holcomb, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.